IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3395 OF 2005

IN

SUIT NO.3005 OF 2005

Mr.Abedali Kamruddin Kutiyanawala ...Plaintiff.

vs.

Moizali Kamruddin Kutiyanawala
and others. ...Defendants.

Mr.H.G.Vijaykumar i/b. Vijaykumar & Co., for Plaintiff.

Mr.K.K.Shroff i/b. Shamim & Co, for Defendant nos.6 and 7.

CORAM: D.K.DESHMUKH,J.

DATED: 13th June,2007.

P.C.:-

1. This is a notice of motion taken out by the plaintiff. The plaintiff claims an order of temporary injunction restraining the defendant

nos. 6 and 7 from transferring, alienating the suit flat. Even, according to the defendants the suit flat was owned by Mrs.Rubabbai who admittedly was the mother of the plaintiff. According to the defendant nos. 6 and 7, Mrs.Rubabbai and the defendant no.1 had entered into an agreement to sale the flat to defendant nos. 6 and 7. But before the sale deed could be executed, Rubabbai admittedly, died. The sale deed on the basis of which the defendant nos. 6 and 7 are claiming title to the flat is admittedly executed only by the defendant no.1. According to the defendant nos. 6 and 7 the plaintiff and the other heirs have relinquished their shares in the flat and therefore, the defendant no.1 was entitled to execute the sale deed and the sale deed is valid. However, it is an admitted position that the deed of relinquishment on which the defendant nos. 6 and 7 rely and which alleged to have been executed by the plaintiff alone,is not a registered document.

2. The plaintiff is also disputing the authenticity of that document. In my opinion, leaving the question of authenticity of that document aside, in the absence of registration of relinquishment deed the relinquishment of the shares of the plaintiff and other heirs in the flat will not take effect, in the absence of the registration of the document, and therefore, the plaintiff will continue to be a part owner of the flat, and therefore, the sale deed executed by the defendant no.1 alone will not have effect of transferring the title of the plaintiff in the flat in favour of defendant nos. 6 and 7. In my opinion, therefore, it appears that the plaintiff has strong prima facie case in his favour. In this view of the matter therefore, in my opinion, in order to avoid any further complications in the matter, it would be appropriate to restrain the defendant nos. 6 and 7 from further transferring the property. The notice of motion

is therefore, granted in terms of prayer clause (a). Notice of motion is disposed of.